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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 JUN 24 PM 3:40 ✓

SANDRA K. HARRAHAM, CLERK

BY: *[Signature]*

5 IN THE SUPERIOR COURT

6 STATE OF ARIZONA, COUNTY OF YAVAPAI

7 STATE OF ARIZONA,

V1300CR201080049

8 Plaintiff,

STATE'S MOTION TO PRECLUDE
DEFENDANT FROM MOVING TO STRIKE
STATE'S ALLEGATION OF AGGRAVATING
CIRCUMSTANCES

9 vs.

10 JAMES ARTHUR RAY,

(The Honorable Warren Darrow)

11 Defendant.
12

13
14 Comes now the State of Arizona, through undersigned counsel, and respectfully moves
15 this Court to deny Defendant's Motion to Strike the State's Allegation of Aggravating
16 Circumstances. This motion is supported by the following Memorandum of Points and
17 Authorities.

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 Facts:

20 On February 16, 2010, the State filed an Allegation of Aggravating Circumstances
21 Pursuant to A.R.S. § 13-701(D). In the allegation, the State alleged 5 separate aggravating
22 circumstances pursuant to the statute:
23

- 24 1. The presence of an accomplice (A.R.S. § 13-701(D)(4)).
25 2. The especially heinous, cruel or depraved manner in which the offense
26 was committed (A.R.S. § 13-701(D)(5)).

1 3. Defendant committed the offense as consideration for the receipt, or in
2 the expectation of the receipt, of anything of pecuniary value (A.R.S. § 13-
3 701(D)(6)).

4 4. The victim or, if the victim has died as a result of the conduct of
5 Defendant, the victim's immediate family suffered physical, emotional or
6 financial harm (A.R.S. § 13-701(D)(9)).

7 5. Any other factor that the State alleges is relevant to Defendant's
8 character or background or to the nature or circumstances of the crime, to-wit:

9 a. Defendant was in a unique position of trust with each victim
10 (A.R.S. § 13-701(D)(24)).

11 On February 16, 2011, trial commenced in this matter.

12 On June 22, 2011, the jury found Defendant guilty of three counts of negligent homicide.
13 Following the verdict, the jury was ordered to reconvene on June 28, 2011 for further trial on the
14 aggravating circumstances alleged by the State.

15 On June 23, 2011, Defendant provided notice via e-mail of his intent to file a motion to
16 strike four of the five aggravating circumstances that the State had alleged. Defendant further
17 requested oral argument be held on June 27, 2011 (See exhibit A). To date the State has not
18 received the referenced motion.

19 Contemporaneously with the filing of this motion, the State has filed a Notice of
20 Dismissal of the aggravating circumstances of the presence of the accomplice and that the
21 offense was committed in an especially heinous, cruel or depraved manner.

22 **Legal Argument:**

23 **Defendant's proposed motion is untimely under Rule 13.5(d), Ariz. R. Crim. P.**

24 Arizona Rules of Criminal Procedure, Rule 13.5(d) provides that a defendant's challenge
25 to the legal sufficiency of an alleged non-capital sentencing allegation shall be made by motion
26 filed pursuant to Rule 16, Ariz. R. Crim. P.

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1 Rule 16.1(b) directs that all motions under Rule 16 shall be made no later than 20 days
2 prior to trial.

3 The State filed its Allegation of Aggravating Circumstances on February 16, 2010, a year
4 before the trial commenced in this matter. Had Defendant wanted to challenge any of the
5 allegations, he was required to do so no later than 20 days prior to trial. *Rule 13.5(d), Ariz. R.*
6 *Crim. R.* Defendant failed to timely file his objection and should not be allowed to do so at this
7 late date.
8

9 Accordingly, the State respectfully requests this Court deny any motion filed by
10 Defendant challenging the State's allegations of aggravating circumstances. Given the untimely
11 nature of the challenge, oral argument is not needed and the State should be allowed to proceed
12 in presenting the remaining three aggravating circumstances to the jury as scheduled.

13 RESPECTFULLY submitted this 24th day of June, 2011.

14
15
16 By Sheila Sullivan Polk
17 SHEILA SULLIVAN POLK
18 YAVAPAI COUNTY ATTORNEY

19 COPIES of the foregoing emailed this
24th day of June, 2011:

20 Hon. Warren Darrow
21 Dtroxell@courts.az.gov

22 Thomas Kelly
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COPIES of the foregoing delivered this
24th day of June, 2011, to

Thomas Kelly
Via courthouse mailbox

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Miriam Seifter
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By: Kathy Durre

By: Kathy Durre

Kathy Durrer

From: Seifter, Miriam [miriam.seifter@mto.com]
Sent: Thursday, June 23, 2011 5:26 PM
To: Troxell, Diane; Sheila Polk; Bill Hughes; Kathy Durrer
Cc: Tamra S. Kelly; Li, Luis; Do, Truc
Subject: Motion to Strike Aggravating Circumstances

Diane and Counsel,

We wanted to let you know that we will file tomorrow a motion to strike four of the five aggravating circumstances that the State has alleged. Because resolution of this motion is necessary to the parties' preparation for the aggravation proceedings next week, including decisions by both parties as to whom to call as witnesses, we request oral argument on the motion on Monday. Can you please let us know if that will work with the Court's schedule?

Thank you very much.

Miriam

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6/24/2011